

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7736**

**BILL NUMBER:** HB 1780

**NOTE PREPARED:** Jan 24, 2005

**BILL AMENDED:**

**SUBJECT:** Deer operations and marketing.

**FIRST AUTHOR:** Rep. Friend

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill adds cervidae to the Commodity Market Development Program. It establishes a registration program for cervidae livestock operations, including hunting preserves, within the Department of Agriculture (DOA). It also exempts accredited zoos and certain federally regulated operations. The bill provides that privately owned cervidae are the property of the owner. It allows cervidae meat and products to be sold. It also establishes operational standards for cervidae livestock operations. The bill establishes fees for registration of an operation; hunting preserve transportation tags; and killing a wild cervidae to flush a facility. The bill establishes additional requirements for hunting preserves and establishes penalties for violations.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures: DOA:** The DOA will need to hire at least one full time staff to implement the provisions of the bill. Costs, including fringe benefits, are estimated at \$55,582. Costs that could be incurred by the Board of Animal Health (BAH) and the Department of Natural Resources (DNR) are currently indeterminable. Additional information will be provided when it becomes available.

*Registration.* A person may not operate a cervidae livestock operation unless the person obtains from the DOA a cervidae livestock facility registration. A cervidae livestock facility in existence before May 15, 2005, is required to obtain a registration not later than January 1, 2006, to continue engaging in a cervidae livestock operation. A person licensed by the DNR to maintain cervidae in captivity under a breeders license must be registered when the person's breeder's license expires or by January 1, 2006, whichever is earlier.

A completed initial application for registration must be submitted to the DOA not less than 60 days before the construction of the cervidae livestock facility. The applicant must submit a business plan that complies with standards adopted by the DOA. Upon receipt of an application, the DOA Commissioner must forward a copy to the DNR and the BAH. The DOA must also send a written notice to each local unit of government where the proposed cervidae livestock facility will be located, unless the DOA determines from information provided in the application, that the land is zoned agricultural. A local unit government may respond, within 30 days after receipt of the written notice, indicating whether the applicant's cervidae livestock facility would be in violation of any ordinance.

The DOA may not issue an initial cervidae livestock facility registration unless the application demonstrates, among other provisions, that the cervidae livestock facility has been inspected by the DOA.

*Inspection of Facilities.* When the construction of a facility is completed, the applicant must notify the DOA in writing. Within 30 days after notification, the DOA must inspect the facility. The DOA must notify the owner or operator of the facility at least 48 hours before an inspection. The DOA must issue a registration within 30 days after completion of the inspection to a cervidae livestock facility that conforms to standards. The time period may be extended by the DOA only if the DOA is unable to verify the removal of wild cervidae or for an act of nature.

The DOA must deny the application for registration if the facility does not comply with requirements. The DOA must notify in writing an applicant of the reasons for a registration denial within 60 days after receipt of the completed application. The notice must specify in writing the deficiencies to be corrected in order for a registration to be issued.

*Appeal of Denied Registration.* Upon receipt of a denial, an applicant may submit a written request for an informal DOA review. The DOA must provide the review. The review must include the applicant, the DOA, the DNR, and the BAH, if applicable. After the informal review, if the Commissioner determines that the proposed cervidae livestock facility or cervidae livestock operation complies with requirements, the DOA must issue a registration within 30 days after the applicant notifies the DOA of completion of the facility. If the facility does not comply with requirements, the DOA must affirm the denial in writing and specify the deficiencies needed to be addressed or corrected in order for a registration to be issued.

*Second Inspection.* Without filing a second application, an applicant may request a second inspection after the specified deficiencies have been corrected. The DOA is not required to make more than two preregistration inspections. Upon receipt of a second denial, the applicant may submit a written request for an informal DOA review. The DOA must provide the review. The review must include the applicant, the DOA, the DNR, and the BAH, if applicable. After the informal review, if the DOA determines that the proposed facility or operation complies, the DOA must issue a registration within 30 days after the applicant notifies the DOA of completion of the facility. If the facility does not comply, the DOA must affirm the denial in writing and specify the deficiencies needed to be addressed in order for a registration to be issued.

*Administrative Hearing.* The applicant may request an administrative hearing under IC 4-21.5 concerning a denial of registration or upon any limitations placed on a registration.

*Adoption of Standards.* The DOA must adopt the standards contained in the "Operational Standards for Registered Privately Owned Cervid Facilities" adopted by the Michigan Department of Agriculture, to evaluate the issuance, maintenance, and renewal of a registration. The DOA after consultation with the DNR and the

BAH may adopt rules to amend, update, or supplement the standards.

*Renewal Applications.* The DOA must send renewal applications 60 days before the registration expiration. An application for renewal must be submitted not later than 30 days before registration expiration. Registrations are valid for three years. A renewal submitted later than 30 days requires submission of an initial application. If the DOA fails to process a complete renewal application that was submitted on time, the current registration is valid until the DOA processes the renewal application. A new owner of a cervidae livestock facility must notify the DOA in writing of the change in ownership. If a cervidae livestock facility's registration will expire within six months from the date that the DOA is notified, the new owner must apply for a new registration.

*Modification of Facilities.* A registered cervidae livestock facility must apply for a modification of the cervidae livestock facility registration before making changes that would lead to a change in the registration classification.

*Hunting Preserve Registration.* The application for a hunting preserve registration must be made on a form provided by the DOA. The owner of the hunting preserve must notify the DOA of changes that affect the suitability of the property for a hunting preserve. If the DOA determines that activities or conditions on the hunting preserve make the property unsuitable, the DOA may revoke the hunting preserve registration. A hunting preserve owner must provide written notification to the DOA if the owner elects to cease hunting preserve activities during the term of the registration. A hunting preserve transportation tag must be attached to the cervidae before the cervidae is loaded into a vehicle. Before leaving the preserve, a permanent seal must be affixed to the cervidae carcass. The seal must remain attached until the carcass is placed in the custody of another person for processing or until the carcass has been processed and packaged. The DOA must provide permanent seals to preserve owners. The DOA would also have to provide forms for hunting preserve owners to keep records of all cervidae taken during the hunting season. The forms must be returned to the DOA not later than March 1 of each year. Each preserve must establish a hunter density ratio which must be on file with the Commissioner.

*Review of Revoked Hunting Preserve Registration.* The owner of a hunting preserve whose registration has been revoked may request the DOA to provide an informal review. The review must include the owner, the DOA, the DNR, and the BAH. After the review, if the Commissioner determines the hunting preserve does not comply, the Commissioner must affirm the revocation in writing and specify the deficiencies needed to be addressed.

*Regulatory Responsibilities of DNR.* The DNR is currently responsible for managing white-tailed deer. Game mammals may be possessed, bought or sold for propagation purposes only. Hunting may occur only within designated seasons and in accordance with rules established by the DNR. Early archery deer season begins in mid-October with firearms season running from mid November to December 1. Archery season concludes the first Sunday of January.

Under the bill, the DOA must enter into a memorandum of understanding with the DNR regarding the joint inspection of hunting preserves; compliance, and investigation of violations. The DNR may not adopt rules concerning hunting preserves. The Commissioner must obtain written confirmation that the DNR has approved the method used to flush any wild cervidae from the facility and that all wild cervidae have been flushed before issuing any registration. Any wild cervidae remaining in the cervidae livestock facility after a person has flushed wild cervidae must be killed or tranquilized and removed by or under the authority of the DNR. The

facility owner must pay the state \$250 per cervid that must be killed. Fees must be deposited in the Fish and Wildlife Fund.

*Regulatory Responsibilities of BAH.* The BAH supervises the prevention, suppression, control, and eradication of diseases affecting the health of animals and the safety of products derived from animals. BAH responsibilities include the state meat inspection program that includes "farm raised cervidae". BAH duties extend to all cervidae species, not just white-tailed deer. In April 2002 the BAH imposed a moratorium on the movement of live cervids, cervid embryos, and cervid semen into the state. This moratorium expired. Under the bill, the Commissioner must enter into a memorandum of understanding with the BAH for determining compliance by cervidae livestock operations and in investigating violations.

*Penalty Provisions.* A person may not knowingly provide the DOA, the Commissioner, or BAH with false information; or resist, impede, or hinder the Commissioner's duties. After an administrative hearing, the DOA may deny, suspend, revoke, or limit a registration if the applicant fails to comply with orders issued by the Commissioner. The DOA may deny suspend, revoke, or limit a registration if, in consultation with the DNR or the Department of Environmental Management, the DOA determines that the issuance of a registration is likely to cause an unreasonable or adverse effect upon the environment or wildlife that cannot be remedied by existing standards. A person who knowingly or intentionally violates these provisions commits a Class B misdemeanor.

A person may not release or allow the release of any cervidae from a cervidae livestock facility. An animal that escapes from a facility is considered to be public property if the operator of a cervidae livestock facility does not notify the DOA as required by rules. A person may not cause the ingress of wild cervidae into a cervidae livestock facility. An owner may not abandon a registered cervidae livestock facility without first notifying the DOA in compliance with the standards. Violators commit a Class B infraction and a Class A infraction for each subsequent offense. A person who knowingly or intentionally violates these provisions commits a Class D felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$21,514 in FY 2004, ranging from a low of \$16,645 to a high of \$49,281. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$59,574, with the costs ranging from a low of \$52,420 to a high of \$77,674. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** *Application Fees.* The following registration fees apply to initial and renewal applications for cervidae facilities:

- (1) Class I (ranch), \$350.
- (2) Class II (hunting preserve), \$350.
- (3) Full registration, \$500.

Fees may not be increased by a rate of more than 5% per calendar year.

The DNR issued 182 game breeders licenses for 2003 to breed white-tailed deer. The 182 game breeders reported possession of approximately 4,000 deer. The majority of breeders own fewer than 20 deer. One breeder owns about one-third of the 4,000 deer. The second highest number owned by a breeder was 100.

Given populations reported in 2003, the amount of revenue that would be generated is not expected to be great. Deer breeders reported in 2002 that they purchased 91 deer and that 593 deer were born in captivity. The breeders reported that 18 deer escaped and 436 were sold. Also, the breeders reported that 454 deer died in captivity.

Proceeds from application fees must be distributed in the following manner:

- (1) DOA: 75% to the Livestock Promotion Fund to promote cervidae and for administration.
- (2) DNR: 5% to the Fish and Wildlife Fund to be used to administer registrations.
- (3) BAH: 15% to the BAH to be used to administer registrations.
- (4) DOA Commissioner, 5% to be used by the Indiana Deer and Elk Farmers Association to promote and market cervidae.

*Hunting Preserve Tags.* A hunting preserve transportation tag must be purchased by a hunter to hunt cervidae on the hunting preserve. There is not a limit on the number of tags a hunter may purchase. The cost of a tag is \$50 for an Indiana resident and \$100 for an out-of-state resident. The proceeds from the sale of the tags must be distributed as follows:

- (1) DOA: 30% to the Livestock Promotion Fund to be used to promote cervidae and administer the program.
- (2) DNR: 40% to the Fish and Wildlife Fund to be used for administration.
- (3) BAH: 25% to the BAH to be used for administration.
- (4) DOA Commissioner: 5% to be used by the Indiana Deer and Elk Farmers Association to promote and market cervidae.

*DNR Removal of Deer from Preserve.* Any wild cervidae remaining in the cervidae livestock facility after a person has flushed wild cervidae must be killed or tranquilized and removed by or under the authority of the DNR. The facility owner must pay the DNR \$250 per cervid that must be killed under the permit issued to meet the requirements. Fees are deposited in the Fish and Wildlife Fund, which is used to fund the Divisions of Fish and Wildlife and Law Enforcement.

*Penalty Provisions.* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. The maximum judgment for a Class A infraction is \$10,000 which is deposited in the state General Fund. The maximum judgment for a Class B infraction is \$1,000 which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

A court may allow the DOA to recover reasonable costs and attorney's fees incurred in a prosecution resulting in a judgment or conviction for a violation. The Commissioner after a hearing may issue a warning or impose a fine of not more than \$1,000 plus the costs of investigation. The Commissioner must notify the Attorney General of the failure of any person to pay a fine. The Attorney General must bring a civil action in a court to recover the fine. Civil penalties collected are paid to the General Fund. The Commissioner may bring an action to obtain a declaratory judgment that a method, an activity, or a practice violates or an injunction.

**Explanation of Local Expenditures:** Upon receipt of an application, the DOA Commissioner must send a written notice to each local unit of government where the proposed cervidae livestock facility will be located, unless the DOA determines from information provided in the application, that the land is zoned agricultural. A local unit government may respond, within 30 days after receipt of the written notice, indicating whether the applicant's cervidae livestock facility would be in violation of any ordinance. This provision will result in additional administrative expenses for local units. However, the increase in costs is not expected to be significant.

*Penalty Provisions.* A Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** *Penalty Provisions.* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** DOA, DNR, BAH, Department of Correction.

**Local Agencies Affected:** Local units where a proposed cervidae livestock facility will be located; trial courts, local law enforcement agencies.

**Information Sources:** DOA; Indiana Sheriffs' Association, Department of Correction.

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